SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 668

McKINLEY E. GORE, PETITIONER,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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JOINT APPENDIX

1 IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLDING A CRIMINAL TERM

(File Endorsement Omitted)

Criminal No. 449-55

Grand Jury No. 542-55

Vio. 26 U.S.C. 4704a, 4705a, 21 U.S.C. 174

THE UNITED STATES OF AMERICA

vs.

McKINLEY E. GORE

Grand Jury Impanelled March 31, 1955, Sworn in on April 5, 1955

Indictment—Filed May 9, 1955

The Grand Jury charges:

On or about February 26, 1955, within the District of Columbia, McKinley E. Gore did sell, barter, exchange and give away to Arthur Lewis narcotic drugs that is, twenty capsules containing a mixture totaling about 24.5 grains of heroin hydrochloride, quinine hydrochloride, milk sugar and sucaryl; and three capsules containing a mixture totaling about four grains of cocaine hydrochloride and milk sugar, not in pursuance of a written order, written for that purpose, from the said Arthur Lewis, as provided by law.

SECOND COUNT:

On or about February 26, 1955, within the District of Columbia, McKinley E. Gore purchased, sold, dispensed and distributed, not in the original stamped packaged and not from the original stamped package, narcotic drugs,

that is, twenty capsules containing a mixture totaling about 24.5 grains of heroin hydrochloride, quinine hydrochloride, milk sugar and sucaryl; and three capsules containing a mixture totaling about four grains of cocaine hydrochloride and milk sugar. These are the same narcotic drugs referred to in the first count of this indictment.

THIRD COUNT:

On or about February 26, 1955, within the District of Columbia, McKinley E. Gore facilitated the concealment and sale of a narcotic drug, that is, twenty capsules containing a mixture totaling about 24.5 grains of heroin hydrochloride, quinine hydrochloride, milk sugar and sucaryl, after the said heroin hydrochloride had been imported, with the knowledge of McKinley E. Gore, into the United States contrary to law. This is the same heroin hydrochloride referred to in the first and second counts of this indictment.

FOURTH COUNT:

On or about February 28, 1955, within the District of Columbia, McKinley E. Gore did sell, barter, exchange and give away to Arthur Lewis a narcotic drug, that is, thirty-five capsules containing a mixture totaling about 38.7 grains of heroin hydrochloride, quinine hydrochloride and milk sugar, not in pursuance of a written order, written for that purpose, from the said Arthur Lewis, as provided by law.

FIFTH COUNT:

On or about February 28, 1955, within the District of Columbia, McKinley E. Gore, purchased, sold, dispensed and distributed, not in the original stamped package and not from the original stamped package, a narcotic drug, that is, thirty-five capsules containing a mixture totaling about 38.7 grains of heroin hydrochloride, quinine hydrochloride and milk sugar. This is the same heroin hydrochloride which is mentioned in the fourth count of this indictment.

SIXTH COUNT:

On or about February 28, 1955, within the District of Columbia, McKinley E. Gore facilitated the concealment and sale of a narcotic drug, that is, thirty-five capsules containing a mixture totaling about 38.7 grains of heroin hydrochloride, quinine hydrochloride and milk sugar, after the said heroin hydrochloride had been imported, with the knowledge of McKinley E. Gore, into the United States contrary to law. This is the same heroin hydrochloride which is referred to in the fourth and fifth counts of this indictment.

/s/ LEO A. ROVER
Attorney of the United States in and for the District of Columbia

A TRUE BILL:

/s/ HARRY GANDY, JR.
Foreman.

IN UNITED STATES DISTRICT COURT

(File Endorsement Omitted)

Arraignment and Plea of Defendant—Filed May 13, 1955

On this 13th day of May, 1955, the defendant McKinley E. Gore, appearing in proper person requests counsel be appointed by the Court, which is so ordered, and, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads Not Guilty thereto.

The defendant is remanded to the District of Columbia jail.

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3 (File Endorsement Omitted)

Verdict—Filed June 2, 1955

On this 1st day of June, 1955, came again the parties aforesaid, in manner as aforesaid, the same jury as aforesaid in this cause, the hearing of which was respited on May 27, 1955; whereupon, Juror No. 6, Ralph Galope becoming unable to perform his duties as a juror is

excused from further service on this jury; thereupon, Alternate Juror No. 1, Mattie McMahan is directed to take seat No. 6 in the jury box; whereupon, Alternate Juror No. 2 is discharged; thereupon, the jury upon their oath say that the defendant is guilty as indicted; whereupon, each and every member of the jury is asked if that is his or her verdict and each and every member thereof say that the defendant is guilty as indicted.

The case is referred to the Probation Officer of the Court and the defendant is remanded to the District of Columbia Jail.

IN UNITED STATES DISTRICT COURT

(File Endorsement Omitted)

Judgment and Commitment—Filed June 28, 1955

On this 24th day of June, 1955 came the attorney for the government and the defendant appeared in person and[1] by counsel, J. Leon Williams, Esquire.

It Is Adjudged that the defendant has been convicted upon his plea of[2] not guilty and a verdict of guilty of the offense of

Violation of Sections 4704a and 4705a, Title 26 and Section 174, Title 21, of the United States Code

as charged[3]

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] One (1) year to Five (5) years and to pay a fine of $500 on Count

One; One (1) year to Five (5) years and to pay a fine of $500 on Count Two to take effect at the expiration of sentence imposed on Count One; One (1) year to Five (5) years and to pay a fine of $500 on Count Three to take effect at the expiration of sentence imposed on Count Two; One (1) year to Five (5) years and to pay a fine of $500 on each of Counts Four, Five and Six to run concurrently by the counts and to run concurrently with the sentence imposed on Counts One, Two and Three; said sentence to take effect at the expiration of sentence imposed in Criminal Case No. 450-55.

It Is Adjudged that the execution of the said sentence be, and hereby is suspended insofar as the payment of the fine is concerned, ONLY.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ LUTHER YOUNGDAHL,
United States District Judge.

IN UNITED STATES DISTRICT COURT

(File Endorsement Omitted)

Motion to Vacate, Set Aside, or Correct Sentence, Provided by Title 28, Section 2255, Federal Rule of Criminal Procedure—Filed March 24, 1956

Comes now the petitioner, McKinley E. Gore, in proper person pursuant to Title 28, Section 2255, U.S.C. and move this honorable Court to vacate sentence that was in excess of the maximum authorized by law.

Criminal Case # 449-55 United States of America vs. McKinley E. Gore, and as cause therefore, show the court as follows:

That the petitioner is a citizen of the United States of America, and over twenty-one (21) years of age, and at present confined in the D. C. Reformatory, Lorton, Virginia.

The petitioner was sentenced in criminal case # 449-55, to imprisonment for a period of one (1) year to five (5) years and to pay a fine of five hundred ($500.00) dollars on count one; one (1) year to five (5) years and to pay a fine of five hundred ($500.00) dollars on count two; to take effect at expiration of sentence imposed on count one; one (1) year to five (5) years and to pay a fine of five hundred ($500.00) dollars on count three; to take effect at the expiration of sentence imposed on count two; one (1) year to five (5) years and to pay a fine of five hundred ($500.00) dollars on each of counts four, five, and six to run concurrently with the sentence imposed on counts one, two and three; said sentence to take effect at the expiration of sentence imposed in criminal case # 450-55.

The petitioner maintains that the Court violated the law under Title 21 Section 174.

When petitioner was sentenced by the Honorable Judge Luther W. Youngdahl to serve in prison a sentence of five (5) to fifteen (15) years, for first offender.

Public Law 255-82nd Congress, Chapter 666, 1st session, H.R. 3490. An Act: To amend the penalty provisions applicable to persons convicted of violation certain narcotic laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section 2 (c) of the Narcotic Drugs Import and Export Act, as amended (U.S.C., Title 21, Sec. 174), is amended to read as follows:

(c) Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale or any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, or conspires to commit any such acts in violation of the laws of the United States, shall be fined not more than $2,000 and imprisoned not less than two (2) or more than

five (5) years. For a second offense, the offender shall be fined not more than $2,000 and imprisoned not less than five (5) or more than ten (10) years.

Jurisdiction of this Court is invoked pursuant to provisions of Title 28, Section 2255, United States Code, which reads in pertinent parts as follows:

TITLE 28, SECTION 2255, U.S. CODE

"A prisoner in custody under sentence of a court established by act of congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the Court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the Court which imposed the sentence to vacate, set aside, or correct the sentence."

"A motion for such relief may be made at any time."

"Unless the files and records in the case and the motion conclusively show that the prisoner is entitled to no relief, the Court shall cause notice thereof to be served upon the United States Attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect there to."

"If the Court finds that the judgment was rendered without jurisdiction, or that sentence imposed was not authorized by law or otherwise subject to collateral attack, or that there has been such a denial or infringement of the Constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the Court shall vacate and set aside and shall discharge the prisoner or re-sentence him, or grant a new trial or correct the sentence as may appear appropriate."

Opinions of the Petitioners

1. It is the opinion of the petitioner that the law allows petitioner to proceed in said actions, because of the following reasons:

a. Because of his financial status.

b. Because he was illegally sentenced.

c. Because certain points of law were not explained to petitioner by counsel, at time of sentence.

d. Because petitioner received a letter from the Honorable Senator Hale Boggs, stating: "That sentence of Title 21, Section 174, is a mandatory sentence."

2. It is the opinion of the petitioner that he be allowed to proceed in said action, because petitioner feels that the ends of Justice be better served if allowed by the Honorable Court to proceed.

The petitioner prays that the Honorable Court will allow petitioner to proceed without prepayment of costs.

/s/ McKinley E. Gore
McKinley E. Gore
Petitioner

Subscribed and sworn to before me this 21st day of March, 1956.

/s/ Wade G. Maddox
Notary Public

My Commission Expires October 31, 1958.

(File Endorsement Omitted)

Denial—Filed April 11, 1956

The records and files and motion of this case conclusively show that the petitioner is entitled to no relief under Sec. 2255.

/s/ Luther W. Youngdahl
District Judge

7 IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLDING A CRIMINAL TERM

(File Endorsement Omitted)

Criminal No. 450-55

Grand Jury No. 543-55

Robbery (22 D.C.C. 2901)

THE UNITED STATES OF AMERICA

v.

McKINLEY E. GORE

Grand Jury Impanelled March 31, 1955, Sworn in on April 5, 1955

Indictment—Filed May 9, 1955

The Grand Jury charges:

On or about April 1, 1955, within the District of Columbia, McKinley E. Gore, by force and violence and against resistance and by sudden and stealthy seizure and snatching and by putting in fear, stole and took from the person and from the immediate actual possession of Thomas A. Bryant property of Thomas A. Bryant consisting of $230.00 in money.

/s/ LEO A. ROVER
Attorney of the United States in and for the District of Columbia

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IN UNITED STATES DISTRICT COURT

(File Endorsement Omitted)

Arraignment and Plea of Defendant—Filed May 13, 1955

On this 13th day of May, 1955, the defendant McKinley E. Gore, appearing in proper person requests counsel be appointed by the Court, which is so ordered, and, being

arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads Not Guilty thereto.

The defendant is remanded to the District of Columbia jail.

IN UNITED STATES DISTRICT COURT

(File Endorsement Omitted)

Withdrawal of Plea—Filed June 20, 1955

On this 20th day of June, 1955, the defendant McKinley E. Gore, appearing in proper person and by his attorney J. Leon Williams, Esquire, in open Court withdraws his plea of not guilty to the indictment heretofore entered and pleads guilty to Assault with Intent to Commit Robbery.

The case is referred to the Probation Officer of the Court and the defendant is remanded to the D. C. Jail.

IN UNITED STATES DISTRICT COURT

(File Endorsement Omitted)

Judgment and Commitment—Filed June 28, 1955

On this 24th day of June, 1955 came the attorney for the government and the defendant in person and[1] by counsel, J. Leon Williams, Esquire

It Is Adjudged that the defendant has been convicted upon his plea of[2] guilty of the offense of

Assault With Intent to Commit Robbery

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Two (2) years to Six (6) years

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9 IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

(File Endorsement Omitted)

No. 13,493

McKINLEY E. GORE, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court
for the District of Columbia

Mr. McKinley E. Gore, appellant, filed a brief, *pro se*, and his case was treated as submitted thereon.

Mr. Forbes Blair, Assistant United States Attorney, with whom *Messrs. Oliver Gasch*, United States Attorney, *Lewis Carroll* and *Joel Blackwell*, Assistant United States Attorneys, were on the brief, for appellee.

Before BAZELON, FAHY and BASTIAN, Circuit Judges.

Opinion—Decided April 25, 1957

BASTIAN, *Circuit Judge:* Appellant (defendant) was tried and convicted under each count of a six-count indictment charging violations of 26 U.S.C. § 4705 (a),[1]

[1] "(a) *General requirement.* It shall be unlawful for any person to sell, barter, exchange, or give away narcotic drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Secretary or his delegate."

26 U.S.C. § 4704 (a)[2] and 21 U.S.C. § 174.[3] No appeal was taken; but some months later the defendant filed in the District Court a motion under § 2255 of Title 18, United States Code, to vacate, set aside or correct the sentences. The present appeal is from the denial of that motion.

The offenses charged in the first three counts relate to a transaction involving the same twenty-five capsules of narcotics and on the same date, whereas the offenses charged in the last three counts relate to another thirty-five capsules of narcotics involved in a transaction on another date.

The trial court sentenced the defendant to imprisonment for from one to five years and imposed a fine of $500.00 on each of the first three counts, the sentences to run consecutively. On each of counts four, five and six, defendant was fined $500.00 and sentenced to imprisonment for from one to five years, these latter sentences to run concurrently with the sentences on the first three counts. All fines were suspended.

The authorities are unanimous that a defendant may be convicted and sentenced under each of several counts

[2] "(a) *General requirement.* It shall be unlawful for any person to purchase, sell, dispense, or distribute narcotic drugs except in the original stamped package or from the original stamped package; and the absence of appropriate tax paid stamps from narcotic drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession the same may be found."

[3] Section 174 provides in part: "Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, or conspires to commit any of such acts in violation of the laws of the United States, shall be fined not more than $2,000 and imprisoned not less than two or more than five years. For a second offense, the offender shall be fined not more than $2,000 and imprisoned not less than five or more than ten years. For a third or subsequent offense, the offender shall be fined not more than $2,000 and imprisoned not less than ten or more than twenty years."

of an indictment if each count states a different offense. The test of whether separate offenses are charged is whether some different evidence is essential to each count, or whether each count is supported by the same evidence. We said recently in *Kendrick* v. *United States*, ——— U.S. App.D.C. ——, 238 F.2d 34 (1956):

> "A single act which violates two statutes is punishable under both, unless the offenses defined therein are identical. The test of identity is whether the same evidence will sustain both charges. If one of the offenses requires an element of proof which the other does not, a conviction of one does not bar prosecution for the other." *Id.* at 36.

See also *Blockburger* v. *United States*, 284 U.S. 299 (1932). When Congress enacted 26 U.S.C. §§ 4704 (a) and 4705 (a), and 21 U.S.C. § 174, it created three separate offenses. Each involves a different facet of the narcotics trade and each has different evidentiary requirements. This court and courts of a number of the other circuits, including the First, Fifth, Sixth, Seventh, Eighth and Ninth, have approved convictions and separate and consecutive sentences for violation of the same statutes involved here, or their predecessors, where each offense arose from one common transaction.[4] And, as re-
12 cently as January 2, 1956, the Third Circuit, in a well reasoned opinion by Judge Maris in *United States* v. *Brisbane*, 239 F.2d 859, a case identical to the present one, reached the same conclusion.

As in Brisbane, the defendant here further urges that, as he is a first offender, the sentences imposed on him violate the limits set by 26 U.S.C. § 7237 (a), popularly known as the Boggs Act. Since the defendant was sen-

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[4] *Solomon* v. *United States*, 58 App.D.C. 182, 26 F.2d 554 (1928); *Long* v. *United States*, 235 F.2d 183 (6th Cir. 1956); *United States* v. *Johnson*, 235 F.2d 159 (7th Cir. 1956); *Torres Martinez* v. *United States*, 220 F.2d 740 (1st Cir. 1955); *United States* v. *Brown*, 207 F.2d 310 (7th Cir. 1953); *Bruno* v. *United States*, 164 F.2d 693 (9th Cir. 1947), *cert. denied*, 333 U.S. 832 (1948); *Sorrentino* v. *United States*, 163 F.2d 627 (9th Cir. 1947); *McIntosh* v. *White*, 21 F.2d 934 (8th Cir. 1927); *Vamvas* v. *United States*, 13 F.2d 347 (1926).

tenced to from three to fifteen years on his first conviction and the maximum sentence for a first offense, under the Boggs Act, is two to five years, his contention has a superficial appeal. However, defendant was tried, convicted and sentenced, not for *one* offense but for *three*, and his sentences do not exceed the maximum for first offenders on each count. So viewed, defendant's contention loses even its superficial appeal.

The Boggs Act, on which appellant bases his contention, was passed to deter the criminal who engages in illicit drug traffic and to increase the penalty for illegal traffic in drugs. See H.R. Rep. No. 635, 82d Cong., 1st Sess., June 21, 1951; S. Rep. No. 1051, 82d Cong., 1st Sess., Oct. 1, 1951; *United States* v. *Brisbane*, *supra*.

It having been long and well established, as above stated, that each count of such an indictment as is here involved states a separate offense, we can uphold defendant's contention only by holding that the three counts must be considered as a single offense, thereby causing his sentence to exceed the maximum for first offenders. We cannot accept this reasoning when its effect would be to reduce sentences for separate and distinct offenses by the use of a statute intended to increase the penalties. Support for rejecting defendant's contention is found in decisions of four other circuits dealing with the same statutes involved here. We cite these decisions with approval. *United States* v. *Brisbane*, *supra*; *United States* v. *Lewis*, 227 F.2d 524 (2d Cir. 1955), *cert. denied*, 350 U.S. 974 (1956); *Everett* v. *United States*, 227 F.2d 457 (6th Cir. 1955); *Beacham* v. *United States*, 218 F.2d 528 (10th Cir. 1955).

In *Brisbane* the defendant urged (1) that he received three separate sentences for a single action, a sale of heroin, which could result in only one offense against the United States; and (2) that the sentences aggregated a period of imprisonment, nine years, which was in excess of the maximum permitted by the Boggs Act for a first offender, which the defendant admittedly was. Both contentions were decided adversely to the defendant.

Consistently with the other circuits which have passed on the question, we conclude that sentence on each sepa-

rate offense of which defendant was convicted was valid, was within the limits prescribed by law, and, in the discretion of the trial court, could be made to run consecutively.

It follows that the action of the District Court was correct.

Affirmed.

BAZELON, *Circuit Judge*, concurring: A drug-peddler dispenses to his customers drugs which he has possessed and concealed; he dispenses them without prescriptions on official treasury forms; and he dispenses them not in or from stamped packages. By legislating separately against each component part of the transaction, Congress facilitated the prosecution and conviction of any who ply the illicit trade. It clearly intended that a person against whom any one of the defined phases of a drug-selling transaction is proved should be punished. It does not follow, however, that by providing for a five-year sentence for a violation of any of the statutes, Congress intended that one who performs the entire transaction receive a cumulative sentence of fifteen years.[1] If we

[1]That Congress intended that drug peddlers be severely punished is beyond doubt. The purpose of the Boggs Act was to provide mandatory minimum sentences and to permit increasingly high maximum sentences for repeated violations. It made possible a 20-year sentence for a third violation of 26 U.S.C. §§ 4704(a) or 4705(a) and precluded suspension of sentence or probation for such an offender. 26 U.S.C. § 7237(a). Similarly, a third offender could be sentenced to 20 years under 21 U.S.C. § 174. By the Act of July 18, 1956, c. 629, Title I, §§ 103 and 105, 70 Stat. 568, 570, the maximum penalty for narcotics repeaters was increased to 40 years.

This clear intent that the offender receive a severe sentence does not imply, however, that Congress also intended that cumulative sentences be imposed when a single criminal act results in separate convictions under all three statutes. *The intent to increase the punishment of a repeating drug-peddler which led Congress in 1956 to raise the maximum penalty to 40 years would seem to suggest rather that it had not been intended, before 1956, that he be punishable by a 60-year sentence.* The legislative history of the Narcotic Control Act of 1956 supports the view that the penalties Congress was providing were for the composite act of drug-peddling, not for the separate counts into which a prose-

were approaching afresh the question whether, in such a case, single or cumulative punishment is the legal course, I think we could not so easily conclude that the consecutive sentences here imposed are authorized. "It would be self-deceptive to claim that only one answer is possible to our problem." *United States* v. *Universal Corp.*, 344 U.S. 218, 224 (1952).

But the question is not one we are at liberty to approach afresh. We are bound by the decision of the Supreme Court in *Blockburger* v. *United States*, 284 U.S. 299 (1932). It may be that the "same evidence" test which has facilitated the fragmentation of crimes into multiple, separately punishable components is being abandoned in favor of a "same transaction" test. See *United States* v. *Universal Corp., supra; Bell* v. *United States*, 349 U.S. 81 (1955); *Prince* v. *United States*, —— U.S. ——, 25 U.S.L. WEEK 4182 (Feb. 25, 1957). Note also the granting of certiorari in cases presenting related problems: *Bartkus* v. *Illinois*, 352 U.S. 907 (1956); *Hoag* v. *New Jersey, ibid;* and *Ladner* v. *United States, ibid.* Unless we are freed from the controlling effect of *Blockburger*, however, we have no choice but to countenance the sentences here imposed.

I am authorized by Circuit Judge Fahy to state that he concurs in the views herein expressed.

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cutor's ingenuity could divide it. See, for example, Report to the House Committee on Ways and Means from the Subcommittee on Narcotics, May 10, 1956, 2 U.S.Code Cong. Serv. 3304 (1956):

> "It is recommended that *the convicted narcotic peddler* be sentenced to not less than 5 years for a first offense and not less than 10 years for a second or subsequent offence. Maximum sentences should be increased to 20 years and 40 years, respectively, for first offenses and for second and subsequent offenses *in the case of narcotic peddlers.*" (Emphasis supplied.)

16 IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

(File Endorsement Omitted)

No. 13,493

Criminal 449-55

McKinley E. Gore, *Appellant*,

v.

United States of America, *Appellee*.

Appeal from the United States District Court for the District of Columbia.

Before: Bazelon, Fahy and Bastian, *Circuit Judges*.

Judgment—April 25, 1957

This Cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On Consideration Whereof, It is ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Per Circuit Judge Bastian.

Separate concurring opinion by Circuit Judge Bazelon.

17 IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

(File Endorsement Omitted)

No. 13,493

McKinley E. Gore, *Appellant*,

v.

United States of America, *Appellee*.

Before: Bazelon, Fahy and Bastian, *Circuit Judges*, in Chambers.

Order Vacating Judgment—June 4, 1957

It is Ordered by the Court, sua sponte, that the judgment of this Court entered herein April 25, 1957, be, and it is hereby, vacated.

Per Curiam.

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18 IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,493

Criminal 449-55

McKinley E. Gore, *Appellant*,

v.

United States of America, *Appellee*.

Appeal from the United States District Court for the District of Columbia.

Before: Bazelon, Fahy and Bastian, *Circuit Judges*.

Judgment—Dated: June 5, 1957

This Cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On Consideration Whereof, It is ordered and adjudged by this Court that the order of the said District

Court appealed from in this cause be, and the same is hereby, affirmed.

Per Circuit Judge Bastian.

Separate concurring opinion by Circuit Judge Bazelon.

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21 Clerk's Certificate to foregoing transcript omitted in printing

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22 SUPREME COURT OF THE UNITED STATES

No. 76 Misc., October Term, 1957

McKinley E. Gore, *Petitioner*,

vs.

United States of America

Order Granting Motion for Leave to Proceed in Forma Pauperis and Granting Petition for Writ of Certiorari—December 16, 1957

On Consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 668.

☆ U. S. GOVERNMENT PRINTING OFFICE 1958—454499/P. O. 1103